

Article 2: Public Rights-of-Way and Land Development*(Amended 11-27-1956 by O-7229 N.S.)**(Amended 9-20-1960 by O-8354 N.S.)**(Amended 8-17-1971 by O-10660 N.S.)***Division 1: Definitions and Regulations***(Amended 8-17-1971 by O-10660 N.S.)***§62.0101 Purpose and Intent**

It is the purpose of this Article to provide for the orderly administration of private contract work in the public right-of-way and to protect the public interest and safety in the development of private property by:

Regulating grading, private encroachments on public rights-of-way or public property, and construction within the public right-of-way, and establishing standards therefor.

*(Amended 11-23-1992 by O-17864 N.S.)***§62.0102 Definitions**

For purposes of this Article, the following definitions apply:

"Agricultural clearing" means any clearing that is done to prepare a site for growing agricultural plants or animals.

"Architect" means an architect registered by the State of California, who is engaged in the practice of architecture.

"Brushing" means the removal of vegetation at or above the ground/surface level and root removal within six (6) inches of the ground/surface level.

"Centre City" means all of that area included within the boundaries of the Centre City San Diego Community Plan as adopted by the City Council on May 12, 1976, and as from time to time amended by the City Council (said plan being on file in the office of the City Clerk as Document No. RR-755413).

"Centre City Review Board" means that board established by Section 62.0209 of the San Diego Municipal Code.

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"Certification" means a signed written statement that the specific, required inspections and tests have been performed and that the work complies with the applicable requirements of this article.

"Certify" means the act of producing or creating a certification.

"Civil Engineer R.C.E." means an engineer registered by the State of California to practice in the field of civil engineering.

"Clearing" means the cutting and removal of vegetation from the land without disturbance to the soil surface or destruction of the root system.

"Contractor" means a contractor licensed by the State of California to do work covered by this Article. A contractor may be authorized to act for a property owner in doing such work.

"Cut" has the same meaning as the term "Excavation."

"Drought Resistant Plantings" means the type of plant materials, including seeds, cuttings, or rooted plants, that, once established, are suitable for the conditions of a project site and that can survive normal summer seasons without the provision of supplemental watering.

"Embankment" or "Fill" means the conditions resulting from any act by which earth, sand, gravel, rock or any other material is deposited, placed, pushed, dumped, pulled, transported, or moved to a new location.

"Encroachment" or "Encroachment Structure" means privately owned facilities or structures in the public rights-of-way or on other public property, constructed and maintained by a property owner.

"Engineering Geologist" or "Certified Engineering Geologist" means a geologist, certified by the State of California as a Certified Engineering Geologist (C.E.G.).

"Environmentally Sensitive Lands" means the areas regulated in San Diego Municipal Code section 101.0462 ("Resource Protection Ordinance"), including floodplains, hillsides, wetlands, biologically sensitive lands, and significant prehistoric and historic site and resources.

"Excavation" or "Cut" means any operation in which earth, sand, gravel, rock, or other material in the ground is moved, by using tools for grading, trenching, digging,

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ditching, drilling, auguring, tunneling, scraping, cable or pipe plowing, drawing, brushing, or other similar activity.

"Fill" has the same meaning as the term "Embankment."

"Geotechnical Engineer" or "Soils Engineer" means a Civil Engineer registered by the State of California as a Geotechnical Engineer (G.E.).

"Grading" means any excavating, filling, embanking, or combination thereof, clearing, grubbing, or agricultural clearing on public or private property, including constructing slopes and facilities incidental to such work.

"Grubbing" means the removal or destruction of vegetation by removal of, or disturbance to, the root system or soil mantle by any means including chemical.

"Grading Advisory Board" means the advisory board established pursuant to this Article.

"Landscape Architect" means a landscape architect, registered by the State of California, to practice in the profession of landscape architecture.

"Landscape Contractor" means a contractor who is licensed by the State of California to do landscaping work and who has at least five (5) years of responsible experience in erosion control planting.

"Permittee" means any person to whom a permit is issued pursuant to this Article.

"Person" has the same meaning as in Section 11.0210 of this Code.

"Private Contract" means an agreement between the City and a property owner, or an agent therefor, for construction by the property owner or agent in the public rights-of-way, on other public property, or for grading.

"Property Owner" means any person having a legal or equitable interest in real property.

"Public Improvement" means publicly owned structures or facilities, including the construction thereof, in the public rights-of-way that are designed for the public use, safety, or general welfare, and that are maintained by the City.

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"Public Property" means property owned in fee by the City or dedicated for public use.

"Public Rights-of-Way" means public easements or public property that are used for streets, alleys or other public purpose.

"Public Utility" means any public utility as defined in California Public Utilities Code Section 216, and any cable operator as defined in Section 602 of the 1992 Cable Television Consumer Protection and Competition Act (47 U.S.C. 602), including their respective contractors, subcontractors, agents, employees or representatives.

"Reservation" means an unaccepted offer of dedication of real property for public rights-of-way, such offer remaining open for future acceptance.

"Slope" means the inclined exposed surface of an embankment, excavation, or natural terrain.

"Soils Engineer," has the same meaning as the term "Geotechnical Engineer."

"Uncontrolled Embankment" means any embankment constructed as grading on which no soil testing was performed or no compaction reports or other soils reports were prepared or submitted.

"Urban Design Program" means that program of urban design standards adopted by the City Council on October 25, 1983, and from time to time amended by the City Council, including all technical supplements thereto (said program and supplements being on file in the Office of the City Clerk as Document No. RR- 259513.
(Amended 5-28-1996 by O-18309 N.S.)

§62.0103 Enforcement Authority and Remedies

- (a) Enforcement Authority. The City Engineer, Building Official and the Director of the Neighborhood Code Compliance Department or any other Director are authorized to administer and enforce the provisions of this Article. The City Engineer, Building Official, Directors, or their designated Enforcement Officials, may exercise any enforcement powers as provided in Division 1, Article 2 of Chapter 1 of this Code.
- (b) Enforcement Remedies. Violations of this Article may be prosecuted as misdemeanors subject to the fines and custody provided in Municipal Code Section 12.0201, unless a specific section of this Code expressly limits enforcement as an infraction. The Directors may also seek injunctive relief and

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civil penalties in the Superior Court pursuant to Municipal Code Section 12.0202 or pursue any administrative remedy set forth in this Division as well as in Chapter 1 of this Code.

- (c) Strict Liability Offenses. Legal responsibility for violations of this Article shall be treated as strict liability offenses regardless of intent.

("Enforcement Authority and Remedies" added (portions previously contained in former Sec. 62.0404) 8-10-1993 by O-17958 N.S.)

§62.0104 Administration

- (a) Permit Issuing Authority. For purposes of Chapter 6, Article 2, the City Engineer and Building Official each are designated as the Permit Issuing Authorities for Grading, Encroachments, and Public Improvements.
- (b) A permit for the work under Divisions 1, 2, 3 and 4 of this Article may be approved when all applicable requirements and provisions of this Municipal Code have been met.
- (c) The Permit Issuing Authority, based on applicable ordinances, policies and standards, shall determine the extent, type, and nature of the work to be done under Divisions 1, 2, 3 and 4 of this Article, the type of application and permit required and the applicable fees.
- (d) When the nature of the work requested is subject to other requirements of this Municipal Code, to other administrative regulations issued pursuant thereto, or affects the operations of any other department of the City, the Permit Issuing Authority shall adhere to those other requirements and shall be guided by the recommendations of other City departments in determining the disposition of the application. Applications that are not consistent with the various requirements shall be denied.
- (e) A valid grading or public improvement permit shall expire and become void 365 calendar days after the date the permit is issued, except as otherwise provided by Sections 111.1128(c) and 111.1129(c) of this Code.
- (f) The Permit Issuing Authority shall cause to be inspected all work done under Divisions 1, 2, 3 and 4 of this Article to ensure compliance with the provisions of the applicable regulations and conditions of approval and shall certify when the work is properly completed.

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- (g) The Permit Issuing Authority may cancel a permit or may require the plans to be amended when it is in the interest of public health, safety or general welfare and under any of the following situations:
- (1) Upon the request of the permittee;
 - (2) When the site conditions or operative facts upon which the permit was sought were not accurately presented in the application;
 - (3) When work as constructed or as proposed to be constructed creates a hazard to public health, safety, or general welfare; or
 - (4) When the permit violates other provisions of the Municipal Code or other state codes.
- (h) Where work subject to the provisions of this Article is undertaken without a permit, the Permit Issuing Authority or the Director of the Neighborhood Code Compliance Department may:
- (1) Order the work to be stopped;
 - (2) Report the violation to the Contractors' Licensing Board or other appropriate agency;
 - (3) Assess a fee of double the normal City processing and inspection fee for the permit;
 - (4) Order the reasonable restoration of the site and any adjacent and affected site to its lawful condition, at the sole cost of the violator;
 - (5) Order mitigation of the violation where the Permit Issuing Authority or the Director of the Neighborhood Code of Compliance Department determines that reasonable restoration of the site to its lawful condition is not feasible or that irreparable damage has been done to an environmentally sensitive area, habitat or structure. Mitigation requirements may include purchase or exchange by the violator of like-kind real property of similar or greater quality and quantity. Mitigation shall be at the sole cost of the violator;
 - (6) Order a combination of restoration and mitigation of the site and any adjacent affected site as the Permit Issuing Authority or Director of the

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Neighborhood Code Compliance Department, depending upon the circumstances, at the sole cost of the violator;

- (7) Cause the suspension of any permits relating to the same property or the withholding of certificates of occupancy for the property until the pre-requisite permit is obtained; and
- (8) Promulgate additional administrative guidelines and regulations to implement and clarify the authority to require restoration and mitigation.

(Amended 8-10-1993 by O-17958 N.S.)

§62.0105 Applications for Permits

- (a) Applications for permits authorizing work under this Article shall be made in accordance with procedures established by the Permit Issuing Authority. Applications shall be accompanied by such detailed plans, specifications, schedules, and estimates as may be required to determine the nature and extent of the work and the applicable fees.

Detailed plans shall be prepared on material and to the size and in the manner designated by the Permit Issuing Authority.

- (b) When proposed work or inquiries concerning the public rights-of-way necessitates investigation, the Permit Issuing Authority may require a special investigation application and fee. Special investigation fees shall be in addition to other fees and are not refundable.
- (c) The permittee shall notify all public utilities of his request to construct improvements or encroachments within the rights-of-way and shall coordinate with the public utilities in order that any necessary relocations of existing facilities may be done in an orderly fashion without interrupting the continuity of service or endangering life or property.

(Amended 10-1-1990 by O-17534 N.S.)

§62.0106 Grading Review Permits

- (a) All grading work that requires a grading permit, shall require a grading review permit in addition to and before a grading permit may be approved or denied, except for the following types of work:

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- (1) Grading for all public improvements, such as curbs, sidewalk, paving, sewer mains, water mains, storm drains, and similar improvements to be installed in the public rights of way when located adjacent to applicant's property and constructed in accordance with City standards.
- (2) All grading work that was fully described in an application for a project that has been previously approved by another discretionary permit.
- (3) All grading work listed in Section 62.0106(a)(3) is determined by the permit issuing authority to be minor:
 - (A) under sidewalk drains;
 - (B) underground private utility lines;
 - (C) private storm drain connection to public storm drains;
 - (D) basement or underground structures encroaching into the street right of way that do not require City Council approval;
 - (E) private irrigation lines and landscaping to be constructed in the street right of way between the curb and property lines by the abutting property owners;
 - (F) grading that does not result in the creation of a slope with a gradient steeper than 25 percent (4 horizontal to 1 vertical foot) and a height of 25 feet or more;
 - (G) fences, landscaping and other encroachments in utility easements.
- (b) A grading review permit may be approved, conditionally approved or denied by a "Hearing Officer" in accordance with "Process Three". The "Hearing Officer's" decision to approve a grading review permit shall be based on the following:
 - (1) The proposed work authorized by the permit is consistent with the applicable ordinances, regulations, policies, and development standards.

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- (2) The proposed work authorized by the permit has satisfied all C.E.Q.A. requirements.
- (3) The permit is consistent with council policies, the General Plan and applicable Community Plan.
- (c) For purposes of Section 62.0106(b), "development standards" shall mean the following City of San Diego Documents:
 - Standard Drawings
 - Plan Preparation Manual
 - Drainage Preparation Manual
 - Street Design Manual
 - Landscape Technical Manual
 - Any other applicable standards adopted for purposes regulating Grading, Public Improvements, and Encroachment Permits.

(Amended 5-18-1998 by O-18512 N.S.)

§62.0107 Permits for Projects within the Coastal Zone

No grading permit, public improvement permit or encroachment permit will be issued by the Permit Issuing Authority for projects or developments within the California Coastal Zone as established by the California Coastal Act of 1976 as amended until such time as a Coastal Development Permit or certificate of exemption has been obtained from the City Development Services Director or the California Coastal Commission except that the repair of curbs, streets, and sidewalks will not be subject to this provision. Procedures to be followed when an application is submitted for a permit in the Coastal Zone are: The application, plans and specifications filed by an applicant for a permit shall be reviewed by the Permit Issuing Authority. Such plans shall be reviewed by other City departments to ensure compliance with the laws and ordinances under their jurisdiction. If the Permit Issuing Authority is satisfied that the work described in the application for a permit, and the plans and specifications filed therewith conform to the requirements of this Code, and other pertinent laws and ordinances, the Permit Issuing Authority shall give notice that they are prepared to issue a permit, when the appropriate fees specified in Section 62.0109 have been paid and the applicant presents an approved permit or certificate of exemption granted by

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the City Development Services Director or the California Coastal Commission.
(Amended 7-25-1994 by O-18088 N.S.)

§62.0108 Exploratory Permits

In certain circumstances there may be a need to conduct geotechnical explorations for the purpose of basic data collection, research, or resource evaluation prior to completion of environmental studies or studies necessary to obtain an RPO permit. In those circumstances, the Permit Issuing Authority may approve, in accordance with "Process One", a grading permit for geotechnical exploration when the Development Services Director makes written findings that all of the following conditions exist:

- (a) The work would not result in serious or major disturbance to an environmental resource; and
- (b) The work contemplated will not have an adverse impact on the biological, prehistoric or historic values of the site.
- (c) The permit is for exploratory work only, and only when the exploratory work is necessary to develop information for other required City reports and studies.
- (d) The work involved is the minimum necessary to accomplish the exploration, survey or testing required.
- (e) The work contemplated by the exploration will not physically enhance the use of the lands.

Notwithstanding any provision of the Resource Protection Ordinance (San Diego Municipal Code section 101.0462), which may provide to the contrary, such permits may be issued without obtaining a Resource Protection permit when the above conditions have been met.

(Amended 7-25-1994 by O-18088 N.S.)

§62.0109 Fees

Permit fees or deposits required by this article shall be collected by the Permit Issuing Authority or other designated person in accordance with procedures established by the City Auditor and Comptroller. A schedule of fees and deposits to cover the costs of processing the various types of work referred to in this Article shall be established by the City Council and filed in the office of the City Clerk. Fixed charges may be established to cover portions of the City Costs. Such fixed charges may include but are

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not limited to the cost for driveway permits, encroachment permits, and public improvement permits, update of City records and enforcement. No permit shall be issued and no work in the public right-of-way or grading shall be permitted until the fees applicable under this Article have been received by the appropriate Permit Issuing Authority.

Any portion of said deposit not used to cover the actual costs of the City in processing a permit application will be refunded, but no funds will be released until all billings are in, and until final acceptance of the work by the Permit Issuing Authority. In determining the actual costs incurred by the City in connection with the processing of final maps and improvements plans, the costs as recorded by the City Auditor and Comptroller shall be prima facie evidence of actual costs of services performed by the City.

The State of California, its political subdivisions or other governmental agencies shall file applications for permits and shall be issued permits as required by this Article; provided, however, that no fees shall be required for work to be performed directly by the State of California, its political subdivisions or other governmental agencies. Contractors working for the State of California, its political subdivisions, or other governmental agencies shall obtain a permit and shall pay the permit fee.

(Amended 11-23-1992 by O-17864 N.S.)

§62.0110 Refunds

In the event a permit fee refund is requested by permittee and the City Engineer has determined that it is in the public interest to allow the permittee to abandon the work, the appropriate Permit Issuing Authority shall cancel the permit and refund the refundable portion of the fee.

("Refunds" renumbered from Sec. 62.0109 and amended on 10-1-1990 by O-17534 N.S.)

§62.0111 Bond Required

Persons performing work under Grading, Encroachment, Public Improvement, or Driveway permits issued in accordance with this Article shall furnish a performance and materialman's bond, cash deposit or other form of security acceptable to the Permit Issuing Authority in accordance with the following provisions:

- (a) The bond shall be issued by a surety company authorized to do business in the State of California and shall be approved by the City. The bond shall be in favor of The City of San Diego and shall be conditioned upon the completion,

free of liens, of the work authorized by the permit in accordance with the requirements of this Article and the conditions prescribed by the permit. The Bonds shall be conditioned upon the surety company completing the required work or in employing a contractor to complete such work. Bonds shall be further conditioned that in the event the surety company does not notify the Permit Issuing Authority within 21 calendar days from the date of receipt of notice of default that it intends to complete the construction, that in such event the surety shall deposit with the Permit Issuing Authority within 35 days of the date of receipt of the notice of default the sum of money equal to the Permit Issuing Authority's estimated cost of the work plus 25%.

- (b) Whenever the Permit Issuing Authority finds that a default has occurred in the performance of any term or condition of work authorized by a permit, they shall give written notice of such default to the principal and surety of the bond. Such notice shall state the work remaining to be done, the estimated cost of completion and the time estimated by the Permit Issuing Authority to be necessary for the completion of the work. After receipt of such notice, the principal or the surety must, within the time specified, either complete the work satisfactorily or deposit with The City of San Diego an amount equal to the Permit Issuing Authority's estimate of the completion cost plus an additional sum equal to 25% of such cost.
- (c) In the event the principal or surety fails to deposit the estimated cost plus 25% with the City, the Permit Issuing Authority may cause the required work to be completed. The principal and the surety shall be liable for the cost of completing all necessary work which shall include all administrative costs and overhead incurred by the City in order to complete the work and collect costs.
- (d) If the principal or surety deposits the estimated cost plus 25% as set forth in the notice, the Permit Issuing Authority shall cause the required work to be completed. The unexpended money shall be returned to the depositor at the completion of such work, together with an itemized accounting of the cost. The principal and surety shall hold the City harmless from any liability in connection with the work so performed by the City or contractor employed by the City. The City shall not be liable in connection with such work other than for the expenditure of said money.
- (e) In lieu of a bond, the permittee may post a cash deposit or other security acceptable to the Permit Issuing Authority with the City Treasurer in an amount equal to the required bond. In the event of a default, the notice of default as provided above shall be given to the principal and if the default is

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not corrected within the time specified, the Permit Issuing Authority shall proceed without delay and without further notice of proceedings whatever to use the cash deposit or other security or any portion of such deposit or security to complete the required work. The balance, if any, of such cash deposit shall, upon completion of the work, be returned to the depositor or to his successors or assigns after deducting the cost of the work.

- (f) No bond under the provisions of this Article shall be required for: 1) any work performed by the State of California, any of its political subdivisions or any governmental agency; or 2) where the estimated cost of the work authorized by the permit is less than or equal to \$50,000.
- (g) Permits issued directly to a contractor pursuant to an approved application by the State of California or any of its political subdivisions or any governmental agency shall require a bond unless proof is submitted that the work is covered by a bond inuring to the benefit of the State or agency.
- (h) The bond may be for a specific project or an annual and continuing bond may be filed with the City covering the costs of several projects. The amount of the bond covering a specific project shall be based on the amount of the estimate submitted by the person doing the work and approved by the Permit Issuing Authority and in accordance with the schedule in Section 62.0112 of this Article.

A person may utilize an annual and continuing bond for more than one permit provided the aggregate bonded amount of the permits outstanding do not exceed the total amount of the bond. Annual and continuing bonds shall contain a clause providing the Permit Issuing Authority within thirty (30) calendar days notice prior to cancellation.

(Amended 6-1-1993 by O-17918 N.S.)

§62.0112 Amount of Bond Required

The bond, cash deposit, or other security amount shall be based on an estimate of the cost of work approved by the City Engineer and in accordance with the following schedule:

- (a) Public Improvements: 110% of the estimated cost of work for the work.
- (b) Encroachments: 110% of the estimated cost of repair and restoration of the right-of-way to its original condition.

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(c) Grading:

- (1) Appurtenances: 100% of the estimated cost of retaining walls, drainage structures, or other grading appurtenances.
- (2) Slope planting and irrigation systems: 50% of the estimated cost of slope planting and irrigation systems.
- (3) Grading:

100% of the cost estimate in an amount up to \$5,000;

\$5,000 plus 50% of the cost estimated above \$5,000 and up to \$50,000;

\$27,000 plus 25% of the cost estimate in an amount above \$50,000.

Any notice of cancellation shall be sent to the appropriate Permit Issuing Authority with sufficient information describing the project(s), permit type(s) and number, date issued, and purpose of the permit.

(Amended 11-23-1992 by O-17864 N.S.)

§62.0113 Qualifications to do Work

- (a) All work under this Article shall be performed by a contractor who is licensed by the State of California to do the work proposed under the permit; provided, however, that any person occupying property as that person's primary residence or constructing a house to be occupied as that person's primary residence may present an application to personally construct improvements or encroachments in the public right-of-way adjacent to that person's property or to do grading work on the property.
- (b) Plans for public improvement and major work involving encroachment or grading authorized under this Article shall be prepared by a civil engineer. Where soils reports or soils investigations and/or geologic reports or geologic investigations are required, the reports and investigations shall be prepared and conducted by a soils engineer or engineering geologist.
- (c) Revegetation plans for projects involving public improvements and major work involving encroachment or land development authorized under this Article shall be prepared by a Landscape Architect or other licensed professional

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whose primary area of work includes revegetation.
(Amended 11-23-1992 by O-17864 N.S.)

§62.0114 Appointment of Hearing Officer

The City Manager may appoint a Hearing Officer to act on applications requesting a grading review permit.
(Retitled to "Appointment of Hearing Officer" and amended 11-23-1992 by O-17864 N.S.)

§62.0115 Public Utility Work

Any work authorized by permit as a result of application by a public utility may be performed by either the public utility or by its licensed contractor.
(*"Public Utility Work" renumbered from Sec. 62.0114 on 10-1-1990 by O-17534 N.S.*)

§62.0116 Public Improvement, Grading, Encroachment Requirements

- (a) All work done under this Article shall be done in accordance with the approved plans and the conditions of the required permits, City contract, or franchise. The work shall conform to the standards of the City of San Diego as set forth and contained in standard drawings, specifications and general conditions, on file in the office of the City Clerk.
- (b) This Article shall not affect the requirements of any other Division of this Code requiring other permits, fees, or charges, including those for water and sewer mains, storm drains, and services.
- (c) Any person or entity performing work covered by this Article shall provide a bond as described in Sections 62.0111 and 62.0112 of this Municipal Code and shall comply with the requirements of those sections.

(Amended 5-28-1996 by O-18309 N.S.)

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